

BEFORE THE
MISSOURI REAL ESTATE COMMISSION

In the Matter of the Application of)
)
 CARL O. WUESTEHUBE,)
)
 Applicant.)

**ORDER ISSUING A PROBATED REAL ESTATE
BROKER LICENSE TO CARL O. WUESTEHUBE**

The Missouri Real Estate Commission ("MREC") hereby issues its
ORDER granting a PROBATED real estate broker license to CARL O.
WUESTEHUBE ("WUESTEHUBE") pursuant to the provisions of § 324.038,
RSMo¹.

**I
FINDINGS OF FACT**

The MREC makes the following Findings of Fact:

1. The Missouri Real Estate Commission ("MREC") is an agency of
the State of Missouri, created and established pursuant to Section 339.120,
RSMo, for the purpose of executing and enforcing the provisions of Chapter
339, RSMo, Real Estate Agents, Real Estate Brokers, Appraisers and Escrow
Agents.

¹ All statutory references are to the Revised Statutes of Missouri, as amended,
unless otherwise specified.

2. License applicant Carl O. Wuestehube is an adult individual whose address is 33832 Diana Drive, Dana Point, California 92629.

3. Wuestehube is the principal and designated broker for Tri Star Realty, an entity licensed as a real estate brokerage in the State of California.

4. Wuestehube filed an application with the MREC for licensure as an Individual Broker, received July 11, 2014. This settlement agreement represents the Board's action on that application.

5. Wuestehube holds active real estate licenses in the following states:

- a. Alabama, Qualifying Broker No. 000103906-0;
- b. Alaska, Broker No. 1846;
- c. Arizona, Real Estate Broker No. BR637700000;
- d. California, Broker No. B/00634943;
- e. Colorado, Independent Broker No. II100039696;
- f. Florida, Real Estate Broker No. 3239712;
- g. Georgia, Broker No. 349347;
- h. Idaho, Broker No. DB40424;
- i. Indiana, Real Estate Broker No. RB14041537;
- j. Iowa, Real Estate Broker No. B60413000;

- k. Nevada, Individual Broker No. 1001092;
- l. New Mexico, Broker No. 19094;
- m. North Dakota, Broker No. 9074;
- n. Oregon, Principal Broker No. 201209232;
- o. South Dakota, Responsible Broker No. 14834;
- p. Wyoming, Responsible Broker No. 12977;
- q. Utah, Principal Broker No. 8641189-PB00.

Nebraska Discipline and Denial

6. On November 4, 2009, the State Real Estate Commission of Nebraska (NSREC) issued a cease and desist order against Wuestehube and Tri Star Realty, directing them to cease all conduct requiring a real estate license in Nebraska, including the advertising of Nebraska properties for sale on Internet sites and negotiating listing agreements with owners of Nebraska real estate. The cease and desist order specifically referred to Wuestehube's listing of Nebraska properties on realtor.com.

7. On December 2, 2010, Wuestehube filed an application for licensure as a real estate broker in Nebraska.

8. On April 7, 2011, the NSREC filed an Application for Order to Show Cause, alleging that Wuestehube continued to publish listings after the

date of the cease and desist letter, and requesting that Wuestehube be required to show cause why he should not be ordered to pay monetary sanctions.

9. On April 11, 2011, the Director of the NSREC issued a letter to Wuestehube denying his application for licensure, based on the cease and desist letter and the discovery of subsequent listings.

10. On April 15, 2011, Wuestehube requested a hearing on the denial of his application.

11. On May 19, 2011, the NSREC held consecutive hearings on the show cause order and the license application denial.

12. Wuestehube appeared at the show cause hearing by telephone, but terminated his involvement in the show cause hearing.

13. The NSREC telephoned Wuestehube to offer him an opportunity to participate in the application denial hearing, but he advised the NSREC that he requested to withdraw his application for licensing.

14. On May 24, 2011, the NSREC issued a Final Order finding that Wuestehube failed to show cause why he should not be subject to sanctions, and ordered him to pay fines of \$5,000.

15. Also on May 24, 2011, the NSREC issued a Final Order dismissing Wuestehube's petition for review of the denial of his license application.

16. Wuestehube did not seek judicial review of either of the NSREC's Orders of May 24, 2011.

17. On September 1, 2011, the NSREC filed a Complaint for Injunctive and Monetary Relief with the District Court of Lancaster County, Nebraska, seeking to enforce the sanctions order and to have Wuestehube enjoined from practicing real estate brokerage in the State of Nebraska.

18. Wuestehube was served with the Complaint for Injunctive and Monetary Relief on October 31, 2011, and filed an answer with jurisdictional counterclaims on July 23, 2012.

19. The NSREC filed a Motion for Summary Judgment on December 21, 2012, and a motion for leave to respond to the counterclaims on February 26, 2013.

20. On March 20, 2013, the District Court held a hearing on the Motion for Summary Judgment.

21. By decision of Judge Stephanie F. Stacy dated August 29, 2013, the District Court rejected Wuestehube's counterclaims and upheld the order of sanctions issued against Wuestehube. The decision ordered Wuestehube to

pay sanctions of \$5,000, costs of \$280, and attorney fees in the amount of \$15,679.59.

22. Wuestehube did not appeal the District Court's decision of August 29, 2013.

Iowa Discipline

23. On June 4, 2013, Wuestehube signed a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order in a Disciplinary Case with the Iowa Real Estate Commission, agreeing that he violated sections of the Iowa Code by advertising real estate listings using the name of a business which was not licensed as a trade name in Iowa.

24. This agreement was accepted by the Iowa Real Estate Commission, and Wuestehube paid a civil penalty of \$500.

Montana Denial

25. On February 15, 2013, Wuestehube applied to the Board of Realty Regulation of Montana (MBRR) for licensure as a broker.

26. In his application, Wuestehube answered "no" to a question which asked:

27. Has a complaint ever been made against you with a professional or occupational licensing agency? If yes, please attach a detailed explanation and provide supporting documentation from the source.

28. The staff of the MBRR investigated the application and learned about the prior incident of discipline in Iowa as described above as well as complaints in Georgia and Idaho.

29. On September 26, 2013, the MBRR met and determined that Wuestehube's application for licensure would be denied on account of the discipline in other states and his failure to disclose it.

30. On October 15, 2013, the Department of Labor and Industry of Montana sent Wuestehube a notice of intention to deny his license, which was delivered to Wuestehube on October 19, 2013.

31. Wuestehube submitted a request for reconsideration of the denial and a hearing.

32. On November 13, 2013, Wuestehube withdrew his request.

33. On November 21, 2013, the MBRR issued a Final Order denying Wuestehube's application for a broker's license in Montana.

Missouri Listings

34. At all times in question, Wuestehube has been the responsible broker for Tri Star Realty, Inc., a California licensed real estate brokerage.

35. Wuestehube, through Tri Star Realty, Inc., has on many occasions listed Missouri properties on owners.com, realtor.com, forsalebyowner.com, and other websites.

36. On March 9, 2012, Wuestehube through Tri Star maintained the following listings on forsalebyowner.com:

- a. 1709 Stoneridge Road, Sparta, Missouri;
- b. 581 Jack North Loop, Camdenton, Missouri;
- c. 930 Millwood Drive, Reeds Spring, Missouri;
- d. 18811 Pleasant View Drive, Lebanon, Missouri;
- e. 3110 Sunset West Drive, Joplin, Missouri;
- f. 14096 Elder Road, Dumond, Missouri;
- g. 10200 Huntingdon Ridge, Festus, Missouri;
- h. 12836 Hasbrook Road, St. Louis, Missouri.

37. Each of these listings included Wuestehube's and Tri Star's telephone and fax numbers, and directed potential buyers to call these numbers for showing information.

II CONCLUSIONS OF LAW

1. Section 339.040.1, RSMo, provides:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

2. Section 339.080.1, RSMo, which authorizes the MREC to refuse to issue license, provides in part:

The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100

3. Section 339.100.2, RSMo, Supp. 2013, which sets forth the grounds for discipline, provides in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

. . .

(9) Having been finally adjudicated and been found guilty of the violation of any state or federal statute which governs the sale or rental of real property or the conduct of the real estate business as defined in subsection 1 of section 339.010; . . .

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180

and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040; ...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence . . .

4. The conduct on which the cease and desist order, the order of sanctions, the denial of Wuestehube's license application, and the decision of the District Court were based would also be cause to discipline a Missouri real estate license if committed in Missouri.

5. The orders of the Nebraska Board and the decision of the Nebraska District Court constitute cause for the MREC to deny Wuestehube a license under the terms of Section 339.100.2(9) and (19), RSMo, which is therefore cause for denial of a real estate broker's license under the terms of Section 339.080.1, RSMo.

6. The offense to which Wuestehube admitted guilt in Iowa would also provide cause to discipline a Missouri real estate license if committed in Missouri.

7. The discipline imposed by the Iowa Board constitutes cause for the MREC to deny Wuestehube a license under the terms of Section

339.100.2(9) and (19), RSMo, which is therefore cause for denial of a real estate broker's license under the terms of Section 339.080.1, RSMo.

8. The actions on which the MBRR's Final Order was based, i.e. discipline in other states and failure to accurately report such discipline in his application, would also be cause to discipline a Missouri real estate license.

9. The denial of Wuestehube's application by the Montana Board constitutes cause for the MREC to deny Wuestehube a license under the terms of Section 339.100.2(9) and (19), RSMo, which is therefore cause for denial of a real estate broker's license under the terms of Section 339.080.1, RSMo.

10. Wuestehube's actions in posting listings of Missouri properties for sale and exchange on various websites, and charging customers advanced fees for doing so when he was not licensed to practice as a real estate broker, violated Section 339.180, RSMo, and therefore constitutes cause for the MREC to deny Wuestehube a license under the terms of Section 339.100.2(9), (15), (16) (incorporating Section 339.040.1, RSMo), and (19), RSMo, which is therefore cause for denial of a real estate broker's license under the terms of Section 339.080.1, RSMo.

11. As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1 RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.

12. The MREC issues this Order in lieu of denial of Wuestehube's application for a real estate broker license. The MREC has determined that this Order is necessary to ensure the protection of the public.

III ORDER AND TERMS AND CONDITIONS

1. **Probated Broker's License granted.** Wuestehube is granted a license as a Real Estate Broker, subject to a term of probation as described below.

2. **Wuestehube's license is on probation for five years.**

Wuestehube's real estate broker license is hereby placed on PROBATION for a period of FIVE YEARS from the effective date of this Order. The period of probation shall constitute the "disciplinary period." During the disciplinary

period, Wuestehube shall be entitled to practice as a real estate broker under Sections 339.010 through 339.205 and 339.710 through 339.860, RSMo, as amended, provided Wuestehube adheres to all the terms of this agreement.

3. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Wuestehube shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Wuestehube shall notify the MREC in writing within ten (10) days of any change in this information.

B. Wuestehube shall timely renew his real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license in a current and active status. During the disciplinary period, Wuestehube shall not place his real estate license on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Wuestehube may surrender his real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Wuestehube applies for a real estate license after surrender, Wuestehube shall be required to requalify as if an original applicant and the MREC will not be

precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Wuestehube shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Wuestehube shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Wuestehube shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Wuestehube shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Wuestehube's license as a real

estate broker under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Broker Acknowledgement. If at any time during the disciplinary period Wuestehube wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Wuestehube must obtain the Broker Acknowledgement form from the MREC.

4. Upon the expiration and successful completion of the disciplinary period, Wuestehube's real estate broker license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Wuestehube has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Wuestehube's real estate broker license.

5. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for

hearing before the MREC in accordance with the provisions of Chapter 536, RSMo.

6. If the MREC determines that Wuestehube has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

7. If any alleged violation of this Order occurs during the disciplinary period, the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

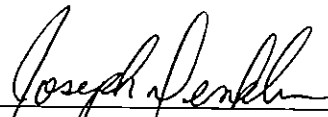
8. The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 324, 339, and 610, RSMo.

9. Wuestehube is hereby notified that he has a right to a hearing before the administrative hearing commission, if he files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If Wuestehube

desires the Administrative Hearing Commission to review this Order, Wuestehube may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

10. This Order is effective upon entry. If Wuestehube seeks review of this Order by the Administrative Hearing Commission, it shall remain in effect unless stayed or suspended by the Administrative Hearing Commission pursuant to Section 621.035, RSMo, and 1 CSR Section 15-3.320.

SO ORDERED AND EFFECTIVE THIS 10th DAY OF APRIL, 2015.



Joseph Denkler, Executive Director
Missouri Real Estate Commission